

## BAROKAS MARTIN &amp; TOMLINSON

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RESIDENT COUNSEL, ALASKA OFFICE  
HERBERT A. VIERGUTZ

**HAND DELIVERED****January 10, 2006**

JAN 10 2006

AT 10:49 AM  
**BURR, PEASE & KURTZ**

**HAND DELIVERED**

Michael W. Sewright, Esq.  
Burr, Pease & Kurtz  
810 N Street  
Anchorage, AK 99501

**HAND DELIVERED**

Steven J. Shamburek, Esq.  
Law Office of Steven J. Shamburek  
425 G Street, Suite 630  
Anchorage, AK 99501-5872

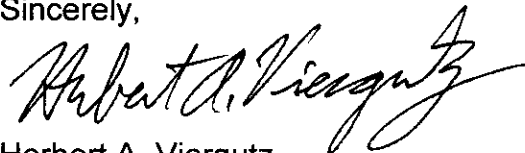
**Re: North Star v. Nugget Construction, et.al.**

Gentlemen:

In an effort to put an end to the outrageous allegations against my client vis a vis bad faith, as articulated, my client has agreed to produce documents previously withheld under claim of privilege. You no doubt appreciate that a motion for summary judgment will be filed regarding the allegations against my client on or before the due date pursuant to Court Order. Hopefully, that will be unnecessary, but I suspect the paranoia which exists may continue to cloud your judgment regarding allegations of bad faith against my client. I therefore urge you to seek expert opinion on a surety's obligation, prior to your continuing down the road which you have chosen, which will necessarily result in a Court Order favorable to my client.

Thank you for taking the time to consider this matter.

Sincerely,



Herbert A. Viergutz

HAV/sbj

cc: Traeger Machetanz, Esq - hand delivered w/enclosures  
Paul Stockler, Esq. - hand delivered w/enclosures  
Janice Smith w/enclosures



Jane Poling

10/24/97 05:27 PM

To: Bill Wells/USFG  
cc: Bryan Martin/USFG, John Phinney/USFG  
Subject: Principal: Nugget Construction, Inc.

Please be advised that I received a claim from underwriting on the above principal. At this time there are the following claims:

- (1) Spencer Rock - \$1,426,707.84
- (2) Northern Stevedoring - \$124,724.98
- (3) Chugagh Rock Corporation - \$86,444.00
- (4) Shoreside d/b/a Marathon Fuel - \$53,062.00
- (5) Metco - undisclosed amount

At this time, I would appreciate it if you could provide me with any information regarding whether this is an on-going account, because based on the information available to me at this time some of the defenses of the principal may be questionable. Also, please provide me with any status reports if you have any, and I will keep you advised of this matter as it progresses.

USF&G 001013

Exhibit 1

Page 2 of 5

**The St Paul**  
Surety

St. Paul Fire and Marine  
Insurance Company  
5801 Centennial Way  
Baltimore, MD 21209

Mailing Address:  
P.O. Box 1138  
Baltimore, MD 21203-1138

November 18, 1999

John Lukjanowicz, Esquire  
Oles Morrison Rinker & Baker LLP  
3300 Columbia Center  
701 Fifth Avenue  
Seattle, WA 98104-7007

Re: North Star Term & Steve Co. Ex Rel. v. Nugget Construction and USF&G et al.  
Principal: Nugget Construction Co., Inc.  
Claim No.: 9901-209083-01-1

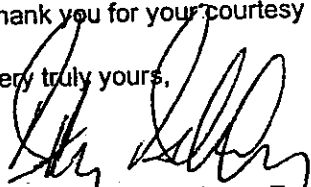
Dear Mr. Lukjanowicz:

Via voicemail message, you have advised that Nugget Construction has been unable to settle the claims of North Star Terminal & Stevedoring Company, Shoreside Petroleum, Inc., and Metco, Inc. So that I may better understand this matter, please advise the settlement offers made by Nugget to each of these three (3) entities. From review of my records, it does not appear that I received a copy of Shoreside Petroleum's settlement demand. Please forward a copy of the same.

Please also provide a status report regarding the State Court litigation between Nugget and Spencer Rock Products. With the status, please provide a copy of any Scheduling Orders entered.

Thank you for your courtesy and cooperation.

Very truly yours,

  
Steven W. Schoenhaar, Esquire  
Sr. Surety Claims Attorney  
Ph: (410) 205-0712  
Fax: (410) 205-0605  
Mail Stop: MC41

St. Paul Fire and Marine  
Insurance Company  
United States Fidelity and  
Guaranty Company  
Seaboard Surety  
Company  
Fidelity and Guaranty  
Insurance Company  
St. Paul Mercury  
Insurance Company  
St. Paul Guardian  
Insurance Company

SWS/mlm

Steven Schoenhaar

09/11/2002 06:42 PM

To: Bill Wells/sfm/spc  
 cc: Scott Cochrane/sfm/spc@spc  
 Subject: Re: Nugget Const. Homer Spit

Bill:

Earlier this week, I received the Order entering summary judgment against Nugget and USF&G. I have written to Nugget's counsel requesting that he advise of Nugget's intentions with respect to these actions. The appeals court had held that Spencer Rock Products was a supplier to Nugget. Under the Miller Act, a supplier to a supplier does not possess a claim against the surety. On remand, the lower court essentially found that after Nugget entered into the support agreement with Spencer Rock, it controlled Spencer Rock's operations to such an extent that the three suppliers were supplying materials directly to Nugget. The Court held that the three suppliers were entitled to recover \$177,512.07 against the Miller Act bond. This is broken down as follows:

North Star: \$124,724.98  
 Metco: \$31,508.56  
 Shoreside: \$21,278.53

When this matter first arose, USF&G tendered its defense to Nugget Construction. Nugget's law firm, Oles, Morrison, and Rinker, has done a competent job in defending the lawsuit and I imagine that Nugget has spent a substantial sum of money in providing our defense. Given that Nugget's liability is now somewhat limited, they may now wish to settle some of these matters.

I assume the appeal bond will be in the amount of two times the underlying judgment. I have held on to the file because it is strictly litigation and does not involve an ongoing project. I know that a new payment bond claim against Nugget was recently forwarded to the Federal Way office.

I will follow up with Nugget's counsel. Please forward any financial information that you have. I suggest that we should, at least initially, request that Nugget obtain the appeal bond from Travelers.

If you wish, I am happy to have a conference call with you and Scott Cochrane.

Bill Wells

Bill Wells

09/11/2002 04:03 PM

To: Steven Schoenhaar/sfm/spc@spc, Scott Cochrane/sfm/spc@spc  
 cc: Stephen Roddie/sfm/spc@spc, Greg Kacanda/sfm/spc@spc  
 Subject: Nugget Const. Homer Spit

Steve,

In March 2000, you may recall being involved in Nugget's court action on the \$3.4mm Homer Spit project under our bond number NP535296. There were issues with Spencer Rock Products, who was unable to furnish rock and there were issues with the definition of Spencer Rock and the impact on other vendors. Northern Stevedoring and the other vendors filed suit against Nugget and won. Nugget appealed and we provided several appeal bonds. It is my understanding that the appeal court denied the original ruling and sent the matter back to the lower court.

I will soon be receiving a letter from Nugget's attorney on all of this. But in summary, I am told that the process is starting over and Nugget is appealing again. A \$340m appeal bond is requested. Nugget is now underwritten by the Travelers. The financial condition of Nugget is marginal because of collection problems on a Federal project that is bonded by Travelers. The matter at hand does involve our performance/payment bond so we may have little choice but to provide the new appeal bond.

Steve, please let me know if you or the Federal Way folks ought to be involved in this. The 2000 court documents showed USF&G as a defendant and I imagine we will again be listed. I will forward documents

USF&amp;G 001014

Exhibit 1

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I receive to you or Federal Way.  
We should then visit about our handling of this.  
Bill.

USF&G 001015